81-147

No.

Office-Supreme Court, U.S.
FILED
JUL 24 1981
ALEXANDER L. STEVAS,
CLERK

In the

# Supreme Court of the United States

OCTOBER TERM, 1981

In Re ANABEL J. McCUTCHEON,

*Petitioner,*

*vs.*

THE BOARD OF EDUCATION, CITY OF CHICAGO, MRS. CAREY B. PRESTON, MICHAEL J. MURRAY, EARL B. HOFFENBERG, JOSEPH P. HANNON, WILLIAM ROHAN, GERARD J. HEING, MARIO GAROFALO,

*Respondents.*

Appeal from the United States Court of Appeals for the Seventh Circuit

*Judge* ROBERT A. SPRECHER
*Judge* HARLINGTON WOOD
*Judge* RICHARD D. CUDAHY
*Judge* WALTER CUMMINGS
*Judge* WILLIAM BAUER

## PETITION FOR AN EXTRAORDINARY WRIT OR IN THE ALTERNATE FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

ANABEL J. McCUTCHEON, *Pro Se*
Apt. 3B: 1917 Tanglewood Drive
Glenview, Illinois 60025
312-328-1630

The Scheffer Press, Inc.—(312) 263-6850

**Oral Argument Requested**

## QUESTIONS PRESENTED FOR REVIEW

I Whether a March 26, 1981 irrelevant decision of the Illinois (State) Appellate Court on Appeal to the Illinois Supreme Court has been prejudicially substituted by the (Federal) Seventh Circuit Court of Appeals for the Judgment Order, 78-3899 and 16 trial court transcripts [Nov 1, 1978-Nov. 30, 1979] records detrimental to Defendants made in the United States District Court of Judge Leighton.

II Whether the Seventh Circuit Court of Appeals, after three years' receipt of "ex parte" communications from Defendants, denied non-attorney due process and equal representation by summarily denying her the public record, a public jury trial, a Change of Venue, Disqualification of Judges Bauer, Cummings, and by rendering an "Unpublished Order Per Curiam" via mail.

III Whether the Chicago Appellate Courts failed to recognize that the Statute for "Removal for Cause—Notice and Hearing—Suspension" [Ill. Rev. Stat., 1975: #34-85] relied upon by Defendants is discriminatory and unconstitutional for the reason that it permits the same (lay) persons [Chicago Board of Education—District of over 500,000 inhabitants] to bring charges and then sit in judgment on those charges, without an independent hearing officer required of other Illinois School Districts in the dismissal of Tenured Personnel.

In Re: Question III—Approved by Defunct Board date April 24, 1974

74-389

## PROPOSAL SUBMISSION: *AUDUBON ECOLOGY CENTER*

RECOMMENDATION:

Ratify submission of an *Audubon Ecology Center,* a proposal for government funding. A copy of the proposal is on file in the Office of the Secretary.

DESCRIPTION:

This proposal would establish an ecology center at the John J. Audubon School to serve the school and community. The proposed program offers opportunities for seven weeks of the summer for study and exploration by teachers, students, and community residents to understand the effects of environment upon people, plants, and animals and their system of ecological interdependence.

SUPPORTIVE DATA:

The successful implementation of some of the social studies, science ecology units, grades kindergarten through eight, developed from the Chicago Curriculum Guides by the Audubon Teacher-librarian emphasized the need for studies in greater depth by teachers to increase the academic excellence of the average above average children—and the need for advanced texts, materials. The success of the Forest Preserve District of Cook County Workshops in Conservation, which were attended by four Audubon teachers and principal emphasized the need for in-service training of all teachers in basic conservation and the need for more varied methods and materials for the improvement of the basic skills of under achievers.

On one-third of the school grounds is an old established lawn (now deteriorated) with several established trees. A scale drawing has been made by the seventh grade accelerated math class to plan for restoration of this lawn.

FINANCIAL:

No additional cost to the Board of Education. Funds in the amount of $28,925.00 will initially be sought from Funding Sources.

Respectfully submitted,

JAMES F. REDMOND
General Superintendent of Schools

Prepared by:

ANABEL J. McCUTCHEON, Principal, John J. Audubon School

Approved by:

Dr. Bessie Lawrence, Superintendent District 7 (Alternate District 3)
Dr. Angeline Caruso, Associate Superintendent, Area C

JAMES G. MOFFAT, Assistant Superintendent, Government Funded Programs

MANFORD BYRD, JR., Deputy Superintendent of Schools

Noted:

ROBERT STICKLES, CONTROLLER

(Same Persons Bringing Suspension-Dismissal Charges, Sept. 7, 1976)

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

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*No.*

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In Re ANABEL J. McCUTCHEON,

*Petitioner,*

*vs.*

THE BOARD OF EDUCATION, CITY OF CHICAGO, MRS. CAREY B. PRESTON, MICHAEL J. MURRAY, EARL B. HOFFENBERG, JOSEPH P. HANNON, WILLIAM ROHAN, GERARD J. HEING, MARIO GAROFALO,

*Respondents.*

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Appeal from the United States Court of Appeals for the Seventh Circuit

*Judge* ROBERT A. SPRECHER
*Judge* HARLINGTON WOOD
*Judge* RICHARD D. CUDAHY
*Judge* WALTER CUMMINGS
*Judge* WILLIAM BAUER

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**PETITION FOR AN EXTRAORDINARY WRIT OR IN THE ALTERNATE FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT**

---

## OPINIONS BELOW

1. The Sua Sponte Order substituting the state court decision for the federal court record detrimental to Defendants was rendered on April 21, 1981 unpublished and appears in App. "A", p. 1a.

2. The Sua Sponte Order (made "ex parte" with Defendants . . . "It is suggested . . .") was rendered on Sept. 18, 1980 and appears in App. "A-1", p. 2a.

No decision was rendered or consideration made of the response of non-attorney Petitioner.

3. The Ruling of Judge William J. Bauer, denying Petitioner the only true record of the Court, Nov. 1, 1978-Nov. 30, 1979 was rendered on March 13, 1980 and appears in Appendix "B", p. 3a.

4. The Ruling of Judge William J. Bauer, supporting the improper procedures of Defendant Attorney Paul H. Heineke was made on March 13, 1980 and appears in Appendix "B-1", p. 5a.

5. The Ruling of Judge William J. Bauer, supporting the loss and continued denial of the Public Court Reporter's Record—the 4th bound volume and other records detrimental to former City of Chicago Corporation Counsel was rendered on April 3, 1980 and appears in Appendix "B-2", p. 6a.

6. Plaintiff's Petition For a Change of Venue to Springfield, Ill. . . . or to Disqualify Judge Walter Cummings was filed on May 11, 1981 and appears in Appendix "C", p. 8a.

7. The "Unpublished Order in Curiam" was rendered on June 25, 1981 and appears in Appendix "D", p. 13a.

8. The March 26, 1981 decision of the Illinois Appellate Court, reviewed by the "Unpublished Order in Curiam" is published in the Illinois Appellate Court Record.

## JURISDICTION

Jurisdiction is invoked for a Writ of Extraordinaire in accordance with 28 U.S.C. §1651 Writs and §1652 Judicial Procedure:

> "(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."

in appeal of the Sua Sponte Order, April 21, 1981 [App. "A", p. 1a] and the "Unpublished Order per Curiam". June 25, 1981 [App. "D", p. 13a] for the reason that the federal Seventh Circuit Court of Appeals has no appellate court jurisdiction over the state courts involved in a "Complaint for Administrative Review" under the Illinois Administrative Review Act. Ill. Rev. Stat. 1975 110: §267.

Notice of Appeal was filed July 17, 1981.

Original jurisdiction is set forth in the Brief and Argument for Appellant, pages 3, 4 accompanying this Petition. Appellate Jurisdiction, p. 8.

Jurisdiction is sought for a petition of certiorari pursuant to 28 U.S.C. 2202 (1970):

> "Further necessary or proper relief based on a declaratory judgment or degree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment."

## CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment V: Guaranty of Trial By Jury; Private Property Respected:

> " 'nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor

be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

U.S. Constitution, Amendment VI: Rights of Accused Persons

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which districts shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor,—and to have the assistance of counsel for his defense.

U.S. Constitution, Amendment XIV: Definition of Citizenship

"nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

U.S. Constitution, Amendment I: Freedom of Religion, Speech

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for redress of Grievances."

## ILLINOIS STATUTES

Ill. Rev. Stat., 1975 Rev.: Chap. 122 §34-85: "Removal for Cause—Notice and Hearing—Suspension:

No teacher or principal appointed by the board of education shall (after serving the probationary period of 3 years specified in Section 34—84) be removed ex-

cept for cause, and then only by a vote of a majority of all members of the board, upon written charges presented by the general superintendent of schools, to be heard by the board or a duly authorized committee thereof. Written notice of such charges shall be served upon the teacher or principal not less than 20 nor more than 30 days before the date of hearing. The hearing shall be held and the decision rendered within 80 days from the date of service of the notice; provided however, that continuances of said hearing granted at the request of the teacher or principal shall not be included in computing this 80 day period. The hearing shall be public at the request of either the teacher or the board. The teacher shall have the privilege of being present at the hearing, together with counsel, offering evidence and making defense to the charges. Before service of notice of charges on account of causes that may be deemed to be remediable, the teacher shall be given reasonable warning in writing, stating specifically the causes which, if not removed, may result in charges. The action and decision of the board as to the existence of reasons or causes for dismissal or removal shall be final unless reviewed as provided in Section 34-85b of this Act. Pending the hearing of the charges, the person charged may be suspended in accordance with rules prescribed by the board but such person, if acquitted, shall not suffer any loss of salary by reason of the suspension. As amended by act approved Aug. 26, 1963.

## STATEMENT OF FACTS

1. Sept. 29, 1978: #78-3899 U.S.D.C. was filed by non-attorney Plaintiff and assigned to Judge John Grady.

2. Oct. 16, 1978 Private Attorneys, who had filed no appearances for Defendants solicited the consolidation (from H. Stuart Cunningham, Clerk of the Court) of this cause with a Dec. 28, 1976 Title VII for which they had no public contract (Right To Defend) the Board of Education,

City of Chicago. [Admitted by Defendant Attorneys, Murray, Heineke, Brown, Zielinski in reply brief, Nov. 28, 1980: p. 5, #80-724 U.S. Supreme Court]

3. Oct. 20, 1978 These letters were sent "ex parte" to Judge Grady, Marshall, Leighton by Nina Cunningham, Administrative Assistant to H. Stuart Cunningham, [p. 27a] without any notice or copy to Plaintiff, who discovered them hidden in the files she first saw, January 29, 1981,

4. Nov. 1, 1978 Judge John Grady ordered Defendant Attorney Paul Heineke to show cause why he was soliciting this consolidation from the Clerk of the Court and Judges "ex parte". [Disputed Transcript Record, Nov. 1, 1978 Refused To Be Certified To The Seventh Circuit and U.S. Supreme Court by H. Stuart Cunningham]

5. Nov. 3, 1978 Judge Leighton consolidated this cause and two others after dismissing Plaintiff's Attorneys before trial; denying her the Court Record (denied her by H. Stuart Cunningham); denying her any discovery in this cause; and subsequently denying her a Public Jury Trial because this cause was consolidated with a Title VII. [Disputed Transcript Record, Nov. 3, 1978 Refused To Be Certified To The Seventh Circuit and U.S. Supreme Court by H. Stuart Cunningham]

6. Nov. 9, 1978 Judge James B. Parsons issued the executive order of transfer Ipso Post Facto the consolidation "take-over" by Judge George N. Leighton.

7. Nov. 20, 1978 "E. Dinger" [p. 31a] (the latter identified as a Deputy Clerk, subordinate to H. Stuart Cunningham) submitted an opinion "ex parte" to the Appellate Court Judges Walter Cummings, William Bauer, Robert A. Sprecher, Harlington Wood of an alleged "Interlocutory Appeal" Before Any Notice Of Appeal,

Nov. 24, 1978. Said false opinion contained the 7th Circuit Court Number, not assigned until Dec., 1978 and was discovered hidden in all Four Files of Plaintiff, Jan. 29, 1981 with corresponding appeal numbers—two others not being filed until after this letter (obviously Back-Dated).

8. Jan-March 1979 Denial of Appeals of Wrongful Consolidation by Judge George N. Leighton on alleged "interlocutory-non-jurisdictional" defense by Defendant Attorneys, who had altered the records.

Items #2, #3, and #7 have been encompassed in the complaint against H. Stuart Cunningham, Charlie Webb, Deputy Clerk of the 7th Circuit: [81 C 686, 81 C 1143]. That the judgment appealed was rendered immediately following Plaintiff's Motion for Default in the U.S. District Court and the presentation of all documentary evidence.

9. Nov. 24, 1979 Bankruptcy of the Board of Education, City of Chicago caused by the specific Defendants named herein.

10. Nov. 30, 1979 Decision and "Unconsolidation of 78 C 3899 by Judge George N. Leighton Via Mail.

11. Jan 16, 1980 Establishment of the Legislative Act, #81-1221 [p. 10] creating the Chicago School Finance Authority and Dismissing specific Defendants on May 1, 1980 for misuse of funds, personnel: specifically entering new paragraphs into Chapter 122 [School Law] *Sanctions,* restricting The Attorney For The Board, Michael J. Murray From Making Any Contracts With Private Law Firms Or Individuals, Thomas Brown, Paul Heineke without statutory authority.

## QUESTIONS ON APPEAL BEFORE THE SEVENTH CIRCUIT

1. Whether the Defendants deprived Plaintiff of a Means of a Livelihood and her constitutional rights of due process by disregarding the Tenure Laws. "Rules and Regulations Governing the Procedure for the Dismissal of Tenured Teachers in the State of Illinois" [Pamphlet Reproduced by the Appellant].

2. Whether the Plaintiff was deprived of her constitutional rights under the First and Fourteenth Amendment of personal liberty and due process: to a private hearing under the Illinois Revised Statutes, Chap. 122: 34-85.

3. Whether the Plaintiff was deprived of her constitutional rights under the Fifth, Sixth, and Fourteenth Amendments by being prosecuted on criminal charges [#1, #3, #5] in an administrative hearing.

4. Whether the Plaintiff was denied her constitutional rights under the First and Fourteenth Amendments of the United States Constitution to criticize the Board and Defendant Joseph P. Hannon on Nov. 10, 1975.

5. Whether the Court of Judge Leighton had jurisdiction to consolidate this cause with a Title VII four-year old complaint on Nov. 3, 1978 and the authority to deny Plaintiff a public jury trial by reason of this consolidation [Transcript, Jan. 19, 1979.]

6. Whether the Nov. 3, 1978 "order of reassignment from Grady to Leighton" docketed Nov. 14, 1978, was a valid order of Judge Grady.

7. Whether the Court erred in dismissing William Rohan, leaving his name out of the Judgment Order (3899).

8. Whether the Court erred in dismissing all Defendants for alleged immunity as acting in a "quasi-judicial" capacity.

9. Whether the Defendant Attorneys have the statutory authority to represent employees Hannon, Heing, Rohan, Garofalo; and whether they have the statutory authority to represent the Defunct Board of Education on appeal without a public contract [Ill. Rev. Stat., 1975, 122: 34-49]

## REASONS FOR GRANTING THIS PETITION

Comes Now the Petitioner, Anabel J. McCutcheon, *Pro Se,* to petition this Honorable Court for a Writ of Mandamus to the Seventh Circuit Court of Appeals in 79-2568 *McCutcheon* v. *The Board of Education,* City of Chicago to enter 16 trial court transcripts, Nov. 1, 1978-Nov. 30, 1979, other pertinent records detrimental to Defendants as the only true record in this cause and to strike or prohibit the entry of the "Unpublished Order Per Curiam" and grant Petitioner the relief requested.

Petitioner also seeks a Writ of Prohibition against the Clerk of the U.S. Seventh Circuit Court of Appeals from entering any "taxation of costs" for private attorneys Paul H. Heineke, Thomas Brown on behalf of the Board of Education, City of Chicago until said attorneys present certified Proof that they are authorized to collect for the Defunct Board of Education, City of Chicago—ex members, ex employees, 1976-1981 responsible for the $550,000,000 bankruptcy, November, 1979 under the new State Statute: P.A. 81-1221

*Sanctions*:

> (Ch. 122, new par. 34A-608) [S.H.A. ch. 122, ¶ 34A-608]
>
> Sec. 34A-608. Sanctions. (a) No member, officer, employee, or agent of the Board shall commit the Board to any contract or other obligation or incur any liability on behalf of the Board for any purpose if the amount of such contract, obligation or liability is in excess of the amount authorized for that purpose then available under the Financial Plan and Budget then in effect.

(b) No member, officer, employee, or agent of the Board shall commit the Board to any contract or other obligation on behalf of the Board for the payment of money for any purpose required to be approved by the Authority unless such contract or other obligation has been approved by the Authority.

(c) No member, officer, employee, or agent of the Board shall take any action in violation of any valid order of the Authority or shall fail or refuse to take any action required by any such order or shall prepare, present, or certify any information (including any projections or estimates) or report for the Authority or any of its agents that is false or misleading, or, upon learning that any such information is false or misleading, shall fail promptly to advise the Authority or its agents.

(d) In addition to any penalty or liability under any other law, any member, officer, employee, or agent of the Board who shall violate subsections (a), (b), or (c) of this Section shall be subject to appropriate administrative discipline, including, if warranted, suspension from duty without pay or removal from office as provided by law.

Section 2. This Act takes effect upon its becoming a law. [S.H.A. ch. 122, ¶ 18-8 note]

Approved: January 16, 1980 Effective: January 16, 1980

The Seventh Circuit Court of Appeals failed to rule on the Statutory Authority of these private attorneys to represent Defendants after their insurance contract had expired December, 1975 because Judge Leighton had permitted them to do so.

Petitioner seeks a Writ Extraordinaire for the extraordinary circumstances of suppression of the true record of the criminal misuse of public funds, personnel by Defendants Board of Education, City of Chicago by former City of Chicago Corporation Counsels: Judge George N. Leighton, Paul H. Heineke, Thomas Brown

and the rulings in their favor by Seventh Circuit Court Judge Walter J. Cummings, whose wife is on the City of Chicago Payroll with no visible duties—and has been for the same period of time of his single rulings in favor of the former City of Chicago Corporation Counsel, April, 1979-to date.

For the extraordinary circumstances of an "ex parte" agreement with Defendant Appellees only [April 21, 1981, App. "A", p. 1a] to strike the federal record and rule on the state court decision without jurisdiction and the three-year receipt of "ex parte" communications from Defendants by specific Judges Robert A. Sprecher, Harlington Wood, William Bauer, Walter Cummings [App. "E-1", p. 37a].

For the extraordinary circumstances that these specific Defendants were fired by the Illinois State Legislature and such firing was upheld by the Illinois Supreme Court [*Polich* v. *Chicago Finance Authority,* 79 Ill. 2d. 188] for the specific crimes of misuse of funds, personnel for the same time period, Nov. 1, 1978-Nov. 30, 1979 of this complaint.

For the extraordinary circumstances that the Chicago Appellate Courts failed to recognize that the Statute for "Removal for Cause—Notice and Hearing—Suspension" [Ill. Rev. Stat., 1975: #34-85] is discriminatory and unconstitutional for the reason that it permits the same (lay) persons [Chicago Board of Education—District of over 500,000 inhabitants] to bring charges (Sept. 16, 1976) after declaring her "guilty" (irremediable) on Sept. 7, 1976 and then sit in judgment on those charges. (Oct. 6, 1976—Oct. 5, 1977) in a Kangaroo Court in which no rulings were made against themselves.

In this specific cause the Chicago Appellate Courts with the record placed before them in her briefs permitted

these same lay persons' Defendants, to bring two criminal charges against Plaintiff, of which Petitioner was acquitted before an administrative hearing without regard for her constitutional rights guaranteed by the Sixth amendment: permitted these lay persons without authority or jurisdiction to confiscate her property and liberty rights guaranteed by the First and Fifth amendments.

For the above reasons, the decision should be reversed in its entirety and all Defendants held for costs, social, punitive, and emotional damages.

Respectfully submitted,

ANABEL J. MCCUTCHEON, *Pro Se*
Apt. 3B: 1917 Tanglewood Drive
Glenview, Illinois 60025
312-328-1630

**CERTIFICATE OF SERVICE**

I hereby certify that three copies of the foregoing Petition for a Writ Extraordinaire and Certiorari were sent to the Seventh Circuit Court of Appeals, former City of Chicago Corporation Counsel Paul H. Heineke, Thomas Brown and the Attorney for The Board of Education. City of Chicago, representing the Defunct Board of Education and ex-employees and ex-members in this three-year appeal. That aforementioned copies were sent by first class mail, postage prepaid on July 23, 1981.

/s/ Anabel J. McCutcheon
Anabel J. McCutcheon

Apt. 3B: 1917 Tanglewood Drive
Glenview, Illinois 60025
312-328-1630

## APPENDIX I

## APPENDIX A

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

Chicago, Illinois 60604

April 21, 1981

By the Court:

No. 79-2568

ANABEL J. MCCUTCHEON,

Plaintiff-Appellant,

vs.

BOARD OF EDUCATION, CITY OF CHICAGO, et al.,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 78-C-3899
GEORGE N. LEIGHTON, *Judge*.

On consideration of the "Motion To Supplement Record On Appeal" filed herein on March 31, 1981 by counsel for the defendants-appellees,

It Is Ordered that said motion is hereby Denied as moot since counsel for the defendants-appellees have been advised and agreed to submit the opinion of the Illinois Appellate Court as a citation of additional authority in accordance with Circuit Rule 11.

## APPENDIX A-1

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

Chicago, Illinois 60604

September 18, 1980

By the Court:

No. 79-2568

ANABEL J. MCCUTCHEON,

Plaintiff-Appellant,

vs.

BOARD OF EDUCATION, CITY OF CHICAGO, et al.,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 78-C-3899
Hon. GEORGE N. LEIGHTON, *Judge*.

NOTICE

It has been suggested that oral argument may not be helpful in deciding this case. If there is no oral argument, a panel of three judges will decide this case on the basis of the briefs and record. Within fourteen days of the date of this Notice any party to this appeal may file with the Clerk an original and three copies of a "Statement As To Need Of Oral Argument," suggesting reasons why oral argument may be necessary for proper resolution of the issues presented. Such statement will be considered, but oral argument may or may not be granted. See Rule 34 of the Federal Rules of Appellate Procedure and Rule 14(f) of the Circuit Rules of the Seventh Circuit.

## APPENDIX B

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

Chicago, Illinois 60604

March 13, 1980

Before

Hon. WILLIAM J. BAUER, *Circuit Judge*
Hon. .....
Hon. .....

No. 79-2568

ANABEL J. MCCUTCHEON,

Plaintiff-Appellant,

vs.

BOARD OF EDUCATION, CITY OF CHICAGO, et al.,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 78-C-3899
GEORGE N. LEIGHTON, *Judge.*

This matter comes before the court upon the filing herein of the following documents:

1. "Plaintiff's Motion To Strike The Consolidated Record: To Reconstruct The Single File Of 78 C 3899 As Per Plaintiff's Four Bound Volumes Submitted; And To Continue This Case Until The Record Is Reconstructed" filed herein on February 22, 1980.
2. "Response" filed herein on March 6, 1980 by counsel for the defendants-appellees.

Pro se appellant requests this court to strike the record in this appeal and to "reconstruct the single file in accordance with the November 30, 1979 order (Vol. II, p. 215) of Judge Leighton vacating consideration and the December 7, 1979 ruling (Vol. II p. 217) denying rehearing to file an amended consolidated complaint instanter." On consideration whereof,

It Is Ordered that plaintiff's motion is hereby Denied.

Because there is no basis for believing that this appeal record was collected impermissibly by the district court clerk or that any of the documents were tampered with,

It Is Ordered that pro se appellant has failed to sustain her burden in justifying modification of the record or the disciplining of court personnel and therefore the motion is Denied.

## APPENDIX B-1

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

Chicago, Illinois 60604

March 17, 1980

Before

Hon. WILLIAM J. BAUER, *Circuit Judge*
Hon. .....
Hon. .....

No. 79-2568

ANABEL J. McCUTCHEON,

Plaintiff-Appellant,

vs.

BOARD OF EDUCATION, CITY OF CHICAGO, et al.,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 78-C-3899
GEORGE N. LEIGHTON, *Judge.*

On consideration of the "Plaintiff-Appellant's Motion To Dismiss With Prejudice Defendant Attorney, Paul H. Heineke As Unqualified Under The Circuit Court Rule 5" filed herein on March 5, 1980,

It Is Ordered that said motion is hereby Denied.

## APPENDIX B-2

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

Chicago, Illinois 60604

April 3, 1980

Before

Hon. WILLIAM J. BAUER, *Circuit Judge*

No. 79-2568

ANABEL J. MCCUTCHEON,

Plaintiff-Appellant,

vs.

BOARD OF EDUCATION, CITY OF CHICAGO, et al.,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 78-C-3899
Judge GEORGE N. LEIGHTON

This matter comes before the court for its consideration upon the following documents:

1. The "Plaintiff-Appellant's Motion For Reconsideration Of The Denial Order" filed herein on March 26, 1980, by the pro se plaintiff-appellant.

2. The "Request For Fourth Bound Volume Of Transcript" filed herein on March 26, 1980, by the pro se plaintiff-appellant.

3. The "Plaintiff's Motion To Certify A Question To The Illinois Supreme Court Of The Authority Of Four Defendant Attorneys To Represent Defendants" filed herein on March 26, 1980.

4. The "Response To Plaintiff-Appellant's Motion For Reconsideration Of The Denial Order" filed herein on April 2, 1980.

5. The "Response To Request For Fourth Bound Volume Of Transcript" filed herein on April 2, 1980, by counsel for the defendants-appellees.

6. The "Response To Plaintiff's Motion To Certify A Question To The Illinois Supreme Court Of The Authority Of Four Defendants' Attorneys To Represent Defendants" filed herein on April 2, 1980, by counsel for the defendants-appellees.

On consideration whereof,

It Is Ordered that the motion for reconsideration of this court's order of March 17, 1980, be, and the same is hereby Denied.

It Is Further Ordered that the request for the bound volume of transcripts be, and the same is hereby Denied. A member of the staff of this court sent all of the material submitted back to the plaintiff-appellant, and none of this material remains in custody of the court.

It Is Also Further Ordered that the request to certify a question to the Illinois Supreme Court be, and the same is hereby Denied.

## APPENDIX C

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

No. 79-2568

ANABEL J. MCCUTCHEON,

Plaintiff-Appellant,

vs.

BOARD OF EDUCATION, CITY OF CHICAGO, et al.,
WILLIAM ROHAN, Et. Al.,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 78 C 3899 Wrongful Dismissal by Kangaroo Court of Fabricated Charges

Judge JOHN GRADY
Judge GEORGE N. LEIGHTON

PETITION FOR A CHANGE OF VENUE TO SPRINGFIELD, ILLINOIS OR IN THE ALTERNATE A MOTION TO DISQUALIFY JUDGE WALTER CUMMINGS AND OTHERS ACTING IN CONJUNCTION WITH HIM ON THE GROUNDS OF PREJUDICE

Now Comes the Plaintiff to petition this Honorable Court for a change of venue outside the City of Chicago or in the alternate to move to disqualify Judge Walter Cummings and others acting in conjunction with him on the grounds of prejudice, hostility towards a non-attorney Plaintiff, who is not only suing the Board Of Education, City Of Chicago, but has also brought evidence in all four wrongly consolidated cases of misuse of state and federal funds by Defendants, the specific defendants who have failed to account for $550,000,000 bankruptcy funds since November, 1979.

In an unfair and biased manner this Court has established a privileged class of Defendants Board Of Education, and Defendant Attorneys Michael J. Murray (brother of a Chicago Judge), Paul Heineke, Thomas Brown, private attorneys who allege to be City of Chicago Corporation Counsels and are politically affiliated with the former City Corporation Counsels, Judges Richard L. Curry and George N. Leighton, before whom they "maneuvered" Plaintiff's wrongful dismissal. That both Judges improperly dismissed her attorneys before trial without granting her the Court Record, discovery, a public speedy hearing or a trial—and a two year delay has been upheld by the Courts at every level—State and Federal: forcing her to go *Pro Se* in competition with private attorneys, hired "under the counter" at approximately $100,000 per year.

Prejudicially, following Defendants' "ex parte" communications with Judge George N. Leighton, Grady, Marshall—and supported by Nina Cunningham, E. Dinger, subordinates of H. Stuart Cunningham, Clerk of the U.S. District Court: Judge Leighton "took over" by sheer force on Nov. 3, 1978 and consolidated this complaint without jurisdiction.

That the 14 pre-trial transcripts of this prejudicial "take-over" were denied by this Court when H. Stuart Cunningham and his subordinates refused to admit same in violation of the Court Rules (4). That the Honorable Justice William Bauer failed to give equal consideration to the motions of Plaintiff for the admission of this reconstructed record—after it was "lost" by Deputy Clerk, Charlie Webb. That said Clerk was granted "special" consideration without a sworn affidavit when he alleged that he had returned it: and the evidence of Plaintiff was not even considered—nor was she allowed a "briefing" or "extension of time" to bring this record before the Court.

That in an unfair and biased manner this Court issued a "sua sponte" order on September 18, 1980 to aid Defen-

dant Attorneys Without Statutory Authority To Be In Any Courtroom In Defense Of Defendant Board: "It has been suggested that oral argument may not be helpful in deciding this case (again the suppression of a public trial against defendants) . . . a panel of three Judges will decide this case on the basis of the briefs (of a non-attorney vs. attorneys) and the record (already denied). That the "it is suggested . . ." again indicates "ex parte" communications by Attorney Paul Heineke to suppress the record withheld from the Court of Judge Leighton, 1976-1979 and from this Court of Appeals, 1979-1981 by H. Stuart Cunningham, politically affiliated with Defendants and certain Judges, George N. Leighton, Walter Cummings, and Richard L. Curry. The suppression of the record of the overpayment of salary to male principal, Karl Siewers and the firing of plaintiff for the same period of time: That the Union represented him, not her and was dismissed without public hearing, trial by Judge Leighton.

That the Honorable Justice Walter Cummings prejudicially failed to brief non-attorney's motions, but briefed the above motion—failed to consider or support the new statute, effective after this suit was filed: Ill. Rev. Stat., 1975, chap 122, new par. 34A-608 Sanctions and prejudicially permits these private attorneys to practice and distort the record without statutory authority. By their own admission, that they have no public contract to represent the Board since April, 1976.

That Justice Mrs. Walter Cummings holds a politically appointed job with the City Of Chicago at a yearly salary of $34,000 by the political appointment of Mayor Jane Byrne: Notwithstanding That Fact Justice Walter Cummings Does Not Disqualify himself from ruling on this case May, 1979-to date for her political affiliates, Thomas Brown, Paul Heineke, Michael J. Murray.

That on April 21, 1981 (without any prior notice to Plaintiff) a "sua sponte" order was issued by this Court to favor Defendants' suppression of the true trial record

of this case—which the Clerk Of The District Court, H. Stuart Cunningham, failed to submit to suppress the errors of Judge Leighton.

That on a previous appeal, alleged "interlockatory", Attorney Paul Heineke was privileged to ignore the Nov. 1, 1978 order of Judge Grady to show cause why he was petitioning H. Stuart Cunningham, Clerk of the District Court to consolidate these cases; such "opinion" was submitted by E. Dinger, subordinate Clerk without notice to Plaintiff and without docketing said "ex parte" letters sent up with that part of the record favorable to Defendants.

That E. Dinger's note was placed in all four files; That E. Dinger's and Nina Cunningham's letters were refused to be submitted to the U.S. Supreme Court, Oct. 8, 1980 and Jan. 5, 1981 by H. Stuart Cunningham, another political appointment through the democratic party.

Plaintiff is bringing this petition at the earliest possible date in view of the fact that she has been denied the public records of Defendants, the public file of her own case, and the Shakman case until she filed suit against H. Stuart Cunningham: whereupon she discovered these letters in the files above, January 29, 1981 and the Deputy Clerks in charge and E. Dinger himself refused to certify said records of their own and H. Stuart Cunningham's Errors.

Over and above a statutory petition for a change of venue this non-attorney, *pro se* plaintiff has a right to move to disqualify Judges Bauer, Cummings for the specific grounds herein stated and to ask for a Change of Venue because of all the "ex parte" communications with Clerks, Judges of the Court: Plaintiff has a right to move to disqualify all involved and a right to be heard and her cause adjudicated by fair and impartial judges, which is not the 7th Circuit Court of Appeals in Chicago. As stated above said Judges have been hostile, beligerent, and prejudicial in order to punish her for daring to challenge the actions of the politically affiliated Defendant Attorneys.

Wherefore, Plaintiff representing herself, petitions for a change of venue to Springfield, Illinois or in the alternate a motion to disqualify, Judge Walter Cummings and others acting in conjunction with him on the grounds of prejudice.

Whereas, the record has failed to be placed before the Court by deliberate, malicious intent of Defendants and the politically affiliated Clerks of the Court, H. Stuart Cunningham and Charlie Webb; That Said Record Was The Only Record In The Briefs Of Plaintiff And Defendants, May-August, 1980: Appellant requests that immediate steps be taken to secure this record for the Court.

That the decision of the Illinois Appellate Court is pending appeal in the Illinois Supreme Court as a matter of right of Plaintiff-Appellant and was deliberately, maliciously created as evidence—after the fact—of McCutcheon's deprivation of job, salary, back pay, terminal pay, and back pension owed her—which this decision "Complaint For Administrative Review" has no relevancy as a replacement for 16 pre-trial transcripts denying Appellant discovery, jury trial, and dismissing her attorneys, forcing her to go *pro se* by the Former City Corporation Counsel, Judge George N. Leighton, who "took over" this case by force, Nov. 3, 1978 before it was transferred to him after the fact November 8, 1978 as a result of "ex parte" communications with Defendants, Clerks of the Court, and the Seventh Circuit Court of Appeals.

.....

Anabel J. McCutcheon

Apt. 3B: 1917 Tanglewood Drive
Glenview, Illinois 60025
312-328-1630

## APPENDIX D

Unpublished Per Curiam Order

JUDGMENT — WITHOUT ORAL ARGUMENT

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

Chicago, Illinois 60604

June 25, 1981

Before

Hon. ROBERT A. SPRECHER, *Circuit Judge*
Hon. HARLINGTON WOOD, JR., *Circuit Judge*
Hon. RICHARD D. CUDAHY, *Circuit Judge*

No. 79-2568

ANABEL J. MCCUTCHEON,

Plaintiff-Appellant,

vs.

BOARD OF EDUCATION, CITY OF CHICAGO, et al.,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 78-C-3899
GEORGE N. LEIGHTON, *Judge.*

This cause came before the Court for decision on the record from the United States District Court for the Northern District of Illinois, Eastern Division.

On consideration whereof, It Is Ordered And Adjudged by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, Affirmed, with costs, in accordance with the order of this Court entered this date.

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

Chicago, Illinois 60604

Submitted: May 12, 1981[1]

June 25, 1981

Unpublished Order Not To Be Cited Per Circuit Rule 35

Before

Hon. ROBERT A. SPRECHER, *Circuit Judge*
Hon. HARLINGTON WOOD, JR., *Circuit Judge*
Hon. RICHARD D. CUDAHY, *Circuit Judge*

No. 79-2568

ANABEL J. MCCUTCHEON,

Plaintiff-Appellant,

vs.

BOARD OF EDUCATION, CITY OF CHICAGO, et al.,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 78-C-3899
GEORGE N. LEIGHTON, *Judge.*

ORDER

Plaintiff-appellant Anabel J. McCutcheon brought this pro se civil rights action against the Board of Education,

[1]After preliminary examination of the briefs, the court notified the parties that it had tentatively decided that oral argument was unnecessary. The notice provided that any party could file a "Statement as to Need of Oral Argument." *See,* Fed. R. App. P. 34(a); Circuit Rule 14(f). Having considered the appellant's Statement as to Need for Oral Argument, the court has concluded oral argument is not necessary. The case is submitted for decision on the briefs and the record alone.

City of Chicago, the General Superintendent of Schools, Joseph P. Hannon, Board member Carey B. Preston and other school officials and employees following her removal for cause as principal of the Audubon Elementary School in Chicago pursuant to hearing and notice (Ill. Rev. Stat., ch. 122, § 34-85 *et seq.* (1973), hereinafter "School Code"). Claiming under the Civil Rights Act of 1841, 42 U.S.C. §§ 1983, 1985 and 1988, plaintiff alleged that the defendants conspired to deprive her of due process and equal protection guaranteed by the Fourteenth and Fifteenth Amendments to the Constitution. In the District Court of the Northern District of Illinois, Eastern Division, the plaintiff sought, *inter alia,* a declaratory judgment that her constitutional rights had been violated, a mandatory injunction reinstating her with back salary, compensatory damages and punitive damages of thirty million dollars, respectively. The district court granted the defendants' motion to dismiss the complaint for failure to state a claim for federal relief. Plaintiff appeals the district court's order of dismissal.

Anabel J. McCutcheon was a tenured educational employee and principal of the Audubon Elementary School form 1965 to October 3, 1977 when she was dismissed from service. On September 7, 1976, she received written notification from General Superintendent Joseph P. Hannon of her suspension pending a hearing before a Trial Committee of the Board of Education on charges of conduct unbecoming a principal and failure to discharge her duties and responsibilities as principal. On both September 16 and October 6, 1976, McCutcheon received a bill of particulars from the Board setting forth the ten specific charges made against her. Fifteen hearing sessions were held over the course of a year pursuant to Board Rules and Regulations Governing the Procedure for the Dismissal of Tenured Teachers in the State of Illinois, copies of which have been filed with plaintiff-appellant's brief. McCutcheon was represented by counsel at the hearings and witnesses were presented on her behalf. On October 3, 1977, the Board approved and

adopted the recommendation of the Trial Committee that she be discharged from service.

Thereafter, McCutcheon filed this action in the United States District Court for the Northern District of Illinois, Eastern Division, claiming that defendants conspired to deny her due process and equal protection. During the pendency of this action in the district court, McCutcheon had judicial review of the Board's action in the Circuit Court of Cook County. The circuit court found substantial evidence in the record to support the Board's decision to terminate, and held that McCutcheon received due process and a fair hearing within the requirements of both Illinois law and the Constitution of the United States. Subsequently, on November 28, 1979, the district court dismissed McCutcheon's complaint for failure to state a federal claim and McCutcheon appealed.

McCutcheon enumerates nine "Issues Presented for Review" in her brief on appeal. Within the context of this case, only the first question presents a substantial issue for consideration by this court. Therefore, the discussion herein will focus primarily upon the first question and the remaining questions will be treated in briefer fashion, *seriatim*. The first issue presented on appeal by the plaintiff-appellant appears in the text of her brief as follows:

1. The Defendants deprived Plaintiff of a means of a livelihood and her constitutional rights of due process by disregarding the Tenure Laws.

The district court dismissed McCutcheon's complaint on the rationale that she had not alleged facts which would prove a deprivation of a constitutional right nor had she alleged facts which would establish a charge of class-based discrimination required for claims under 42

U.S.C. § 1983 and 1985. We affirm the district court's holding.[2]

Liberally construing the facts of McCutcheon's complaint and accepting them as true, as we must in reviewing a dismissal of a complaint on the pleadings, it is apparent that she has not offered facts which if proven would establish a violation of her constitutional rights. The complaint is a rambling and confusing document, consisting mainly of a long diatribe against those whom McCutcheon apparently believes were in some way responsible for her dismissal. The gravamen of McCutcheon's complaint is that she was denied a fair hearing because the defendants were prejudiced against her and conspired to have her dismissed on the basis of "ten fabricated hearsay charges." However, none of the complaint allegations tend to support McCutcheon's claim that the "tenure laws" were in fact disregarded or that there were any deficiencies in the statutorily prescribed hearing process by which she was dismissed. Instead, the allegations of the complaint, when not consumed with matters of personal enmity, argue points of evidence which arose during the hearing, in an apparent attempt to relitigate in federal court the issue of whether the Board had sufficient evidence to dismiss her. From the summary review of the complaint allegations which follows, it can be readily seen that McCutcheon has not

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[2] It is unclear whether plaintiff is asserting a class based discrimination claim on appeal, where as part of the "Conclusion" section of her brief, she states: "Judge Leighton inaccurately and prejudicially ruled: 'The Plaintiff does not . . . nor can she allege facts, which would prove a constitutional deprivation or a charge of class based discrimination.' . . . (Plaintiff) filed no charges of Class Based Discrimination in ths (sic) wrongful firing of a Tenured Principal. Pro Se Plaintiff invoked jurisdiction under Title 42 U.S.C. § 1983, 1988." In any case, it is clear from a review of the complaint (infra) that a charge of class based discrimination does not appear therein.

alleged facts showing discrimination or a denial of procedural due process.

With respect to General Superintendent of Schools, Joseph P. Hannon, McCutcheon claims that he was without authority to bring the charge concerning indecent attire because he was not her supervisor or General Superintendent during the period relevant to that offense. She does not reveal the authority on which she bases such a claim. However, it is clear that under the School Code and the Rules of the Chicago Board of Education the acting General Superintendent has a statutory duty to initiate charges against school board employees. *Jones* v. *Hannon,* 58 Ill.App.3d 504, 508 (1978).

McCutcheon further claims that Hannon was biased against her because she publicly criticized certain school custodial services and charged that there had been a misuse of state funds for construction projects at Audubon in 1973 and 1975 while Hannon was Assistant Superintendent of Facilities Planning, a position he held prior to becoming General Superintendent. It is not clear whether Hannon was ever made aware of such criticisms—they were certainly not directed toward him personally—but, more importantly, McCutcheon does not indicate how Hannon acted to prejudice her hearing rights. From the complaint it does appear that Hannon participated in the hearing process at all beyond formally presenting charges and being represented at the hearing by a Board attorney. He is by statute precluded from voting at Board meetings (School Code, § 34-12) and thus, he could not have voted for her dismissal. Inasmuch as no overt act on the part of Hannon is alleged in connection with plaintiff's claim of a conspiracy to deny her due process hearing rights, the complaint as to Hannon failed to state a claim. *Hostrop* v. *Board of Junior College District 515,* 523 F.2d 569, 576 (7th Cir. 1975), *Adams* v. *Pate,* 445 F.2d 105, 107 (7th Cir. 1971). Finally, it should be noted that McCutcheon does not allege in her complaint a violation of her First

Amendment right, nor does she allege facts tending to show that her exercise of that right was a substantial factor in the decision to dismiss her.

Superintendent William Rohan, Sr., McCutcheon's immediate supervisor, allegedly "demonstrated bias and hostility by refusing to protect Plaintiff from the assault, intimidation and harassment of janitors Garofalo, Moran." McCutcheon describes various personal affronts for which Rohan was allegedly responsible. These are wholly irrelevant to the circumstances surrounding the hearing or to her present civil rights claims with one exception: McCutcheon believes that her office was moved by Moran and Garofalo at the direction of Rohan from a windowless room to an office which contained windows in order to corroborate the testimony of one witness that she was observed scantily clad in an office containing a skylight and windows facing the playground. This allegation raises an evidentiary problem which is not within the province of a federal court to review in a civil rights action. *Butz* v. *Economou*, 438 U.S. 478, 514, 98 S.Ct. 2894, 2915 (1978).

Finally, with regard to Rohan, McCutcheon makes the curious claim that he denied her the right to a private hearing by serving a suspension notice on her at her office while in the presence of two guards and an assistant. Of course, this allegation, which makes no rational sense, does not present a claim of a due process violation.

According to McCutcheon, District Superintendent, Gerard J. Heing, was her immediate supervisor during the period relevant to eight and one-half of the ten charges. McCutcheon relates the many instances in which Heing treated her unfairly in the past, and discusses, in none too clear a fashion, the circumstances surrounding Heing's bringing of charges of insubordination and failure to follow directives. Again, these are evidentiary matters which do not go to the essential question of whether the charges were fairly considered. Finally, she claims that Heing "conspired with defendant Garo-

falo by removing Plaintiff's fourth office phone extension and deliberately placing it in Garofalo's office for the purpose of spying, April, 1975." This allegation is patently frivolous.

The principle charges against Michael Murray, attorney for the Board of Education are the following: that he refused to comply with discovery in two unrelated chancery suits brought by McCutcheon in 1973 and 1974 regarding a "phony merit pay plan", that he held up several pay raises in retaliation for her filing those actions, and that he,

> demonstrated bias and hostility by refusing Plaintiff proper legal services on board matters pertaining to Depositions, Interrogatories—and by improperly ordering her signature on inaccurately prepared interrogatories in which Plaintiff was not present or involved through direct order from the Deputy Superintendent . . . .

Attorney Michael Murray did not represent McCutcheon at her hearing and therefore had no duty to give her "proper legal services." The foregoing allegations concerning Murray are either irrelevant or do not present issues of a constitutional dimension.

The same is true with respect to the allegation concerning defendant Earl B. Hoffenberg, assistant attorney for the Board. McCutcheon merely notes that he appeared at the hearing as the attorney for Superintendent Hannon, although he had not relinquished his position as Board attorney. She offers no explanation of how this dual representation is irregular or how her hearing rights were prejudiced thereby.

Mario Garofalo is the school custodian whom McCutcheon was charged with having threatened with a baseball bat. He allegedly "demonstrated his hostility by verbal and physical assaults on . . . plaintiff, which assaults were supported by Defendants Heing, Rohan, Hannon without investigation. . ." She recounts how

Garofalo received illegal benefits from school officials or private contractors for his custodial services. Such allegations are, of course, irrelevant to her case, and are at best a disingenuous attempt to shift the focus of attention.

Carey B. Preston, Vice President of the Board and Chairperson of the Trial Committee, according to McCutcheon, has previously "demonstrated bias and hostility" toward her by refusing McCutcheon representation of counsel and redress of grievances when she was Chairperson of the Board Grievance Committee overseeing another matter in which McCutcheon was involved. As Chairperson of the Trial Committee, McCutcheon alleges that, "Preston refused to separate one charge from the others regardless of the evidence presented; or to accept any evidence other than the 'irremediable' judgment of the Superintendent made and supported by the Board without investigation before Trial." Other allegations concerning Preston raise similar objections to evidentiary rulings that were made by Preston while conducting the hearing. For example, McCutcheon alleges the following:

> . . . Defendant Preston suppressed all evidence, cross examination and struck testimony of witnesses that refuted Garofalo's testimony on the Rehab program at Audubon . . . and would not permit the introduction of testimony proving bias. . .
>
> • • •
>
> . . . Preston suppressed all criticism, evidence, cross-examination, and struck testimony of witnesses that proved detrimental to the Board and the Defendants Hannon, Heing, Rohan and Hoffenberg. . . . Defendant Preston would not permit Plaintiff to introduce the transcript of Plaintiff's criminal trial concerning the kicking of Tom Moran, Jr. in the buttocks to prove the perjury of Mario Garofalo . . . but permitted Defendant Hoffenberg to introduce some (sic) transcript for cross-examination of Plaintiff and Plaintiff's witnesses.

Preston was not bound by the legal rules of evidence in making evidentiary rulings. Rather, under the rules governing dismissal proceedings, she had large discretion in determining such matters.[3] An abuse of discretion is not indicated by the factual allegations of the complaint, nor does it appear, for that matter, that Preston's evidentiary rulings would be erroneous under the stricter standard of the legal rules of evidence. A claim of constitutional magnitude is thus not indicated by McCutcheon's evidentiary objections. McCutcheon does not claim that there was absolutely no evidence presented to support the decision to dismiss her.

Finally, in her brief on appeal, McCutcheon alleges that Preston was not an independent hearing officer, without specifying the grounds for this allegation. With respect to a noncriminal proceeding, the Supreme Court has required only that the hearing be conducted by some person other than one initially dealing with the

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[3] The Rules and Regulations Governing the Procedure for the Dismissal of Tenured Teachers in the State of Illinois, which plaintiff filed with her brief, sets forth, in relevant part, the evidentiary rules governing dismissal proceedings as follows:

> Evidentiary Rules to be followed during the hearing shall be as follows:
>
> (1) The parties may offer such evidence as they desire and shall produce such additional evidence as the hearing officer may deem necessary to an understanding and determination of the dispute.
>
> (2) The hearing officer shall be the judge of the relevancy and materiality of the evidence offered and strict conformity to legal rules of evidence shall not be necessary.
>
> (3) Objections to evidentiary offers may be made and shall be noted in the record. The hearing officer shall have the power to make ruling including the power to exclude evidence. "Offers of Proof" shall be permitted.
>
> (4) Any hostile witness may be examined as if under cross examination.

case because the officer directly involved in making recommendations cannot always have complete objectivity in evaluating them. *Morrissey* v. *Brewer,* 408 U.S. 471, 485-86 (1972). *See also, Goldberg* v. *Kelly,* 397 U.S. 254, 266, 271 (1970); *cf. Wolff* v. *McDonnel,* 418 U.S. 539, 571 (1974). *See generally,* Lawrence Tribe, American Constitutional Law (1978) § 10-16. McCutcheon does not allege that Preston was previously involved in any aspect of McCutcheon's case, nor does she allege that Preston has a conflict in interest that would disqualify her as an impartial hearing officer.

We conclude, from the foregoing review of the allegations contained in the complaint, that the district court correctly ruled that McCutcheon has not alleged facts showing a deprivation of a constitutional right (citing *Ryan* v. *Aurora City Board of Education,* 540 F.2d 222 (6th Cir. 1976) nor has she alleged facts showing class-based discrimination (citing *Griffin* v. *Breckenridge,* 403 U.S. 88, 102 (1971).

The remaining issues presented by appellant for review by this court (again, stated as they appear in the text of her brief) can be dealt with briefly.

2. The Plaintiff was deprived of her constitutional rights under the First and Fourteenth Amendments of personal liberty and due process to a private hearing under the Ill. Rev. Stat., 1975: 122: § 34-85.

Reference should be made to the above discussion concerning McCutcheon's objection on due process grounds to the delivery of the suspension notice to her by defendant Superintendent William Rohan in the presence of others. The same claim is advanced here and, for the reasons previously noted, it is without merit. The First Amendment issue, however, is presented for the first time on appeal, and therefore should not be entertained by this court, although it is obvious that the claim is frivolous in any event. *Ohio Casualty Co.* v. *Rynearson,* 507 F.2d 575, 582 (7th Cir. 1974). Paren-

thetically, it is interesting to note that the school code provision relied upon by McCutcheon, staes that the "hearing shall be *public* at the request of either the teacher or principal or board." (*supra,* emphasis supplied).

3. The Plaintiff was deprived of her constitutional rights under the Fifth, Sixth, and Fourteenth Amendments by being prosecuted on criminal charges [#1, #3, #7] [sic] in an administration [sic] hearing.

This allegation is meritless for the simple reason that McCutcheon was not prosecuted on criminal charges in an administrative hearing, although matters relating to the kicking of Tom Moran were the subject of a previous criminal action brought by Moran against McCutcheon. Plaintiff is here again presenting an issue for the first time on appeal which, as noted above, she may not do.

4. Plaintiff was denied her constitutional rights under the First and Fourteenth Amendments of the United States Constitution to criticize the Board and Defendant Joseph P. Hannon on Nov. 10, 1975 at a public meeting of the Board: for the illegal transfer and use of funds in violation of Ill. Rev. Stat., 1975: § 34-22.2 and § 34-49.

In her complaint McCutcheon did not allege that she was denied a right to criticize Hannon and the Board or that her dismissal was in retaliation for exercising her right of free speech. Rather, allegations concerning her past criticism of school policy were offered as the reason why Hannon was biased against her. Again, this First Amendment claim is presented for the first time on appeal, and is, in any event, unsupported by the facts of her complaint which fail to show that her prior criticism was a substantial factor in the decision to dismiss her.

5. The Court of Judge Leighton had no jurisdiction to consolidate this cause with a title VII four

year old complaint on Nov. 3, 1978 and no authority to deny Plaintiff a public jury trial by reason of this consolidation [Transcript January 19, 1979].

Judge Leighton ordered the consolidation of this case, and cases numbered 78 C 3894, 78 C 3955 and 76 C 4763, on the grounds of relatedness under Rule 2.31 of the Rules of the United States District Court for the Northern District of Illinois. That order of consolidation was vacated prior to the dismissal of this suit. Assuming that in the above statement plaintiff meant "authority" where she states "jurisdiction," this claim is meritless. Consolidation of actions presenting a common issue of law or fact is permitted as a matter of convenience and economy of administration, and the court is given broad discretion to decide whether consolidation is appropriate. *See generally,* 11 Wright & Miller, *Federal Practice and Procedure*: Civil § 2883.

6. The Nov. 3, 1978 "order of reassignment from Grady to Leighton," was not a valid order of Judge Grady.

McCutcheon questions the validity of this order because she believes that the order of reassignment of this case from Judge Grady to Judge Leighton in the district court was falsified by the defendants and/or the Clerk of the court. She is of the view that neither Judge Leighton or Judge Grady would make such an order "outside of the Executive Committee or in total disregard of chief Judge Parsons." There is no evidence in the record to suggest that the order was falsified. In any event, the point is now moot since Judge Leighton took cognizance of the complaint and decided the matter.

7. The Court erred in dismissing William Rohan, leaving his name out of the Judgment Order (3899) [App. "E". p. 6a].

McCutcheon is here referring to a judgment order of November 27, 1979 denying her motion for summary judgment of default against the defendants. That order named all of the other individual defendants except Rohan, probably by oversight. Again, this issue has been mooted by later developments in the case, including the dismissal of the complaint as to all of the defendants.

8. The Court erred in dismissing all Defendants for alleged immunity as acting in a "quasi-judicial" capacity (Judgment Order—3955) [Appendix "F", p. 10a.].

Judgment order in case number 78 C 3955 is not before this court in this appeal of the district court's order in case number 78 C 3899. We are therefore without jurisdiction to consider this claim.

9. The Defendant Attorneys have no statutory authority to represent Employees Hannon, Heing, Rohan, Garofalo: and have no statutory authority to represent the Defunct Board of Education on appeal without a public contract [Ill. Rev. Stat., 1975, 122: § 34-49].

This attack upon the propriety of the retention of defense counsel does not bear upon McCutcheon's present claim. By her own account, she has notified the Attorney Registration and Disciplinary Commission of Illinois about this matter, which is indeed the proper forum for consideration of this complaint.

In view of the foregoing, the order of the district court dismissing the plaintiff's complaint for failure to state a claim for federal relief is Affirmed. Plaintiff-appellant's "Petition for a Change of Venue to Springfield, Illinois or in the Alternative a Motion to Disqualify Judge Walter Cummings and Others Acting in Conjunction with Him on the Grounds of Prejudice," filed in this Court on May 11, 1981 is Denied.

## APPENDIX E

UNITED STATES DISTRICT COURT

Everett McKinley Dirksen Building

United States Court House

Chicago 60604

H. Stuart Cunningham
Clerk

Office of the Clerk

20 October 1978

Honorable Prentice H. Marshall
Honorable John F. Grady
Honorable George N. Leighton
219 South Dearborn Street
Chicago, Illinois 60604

Re: Anabel J. McCutcheon v. Board of Education
78 C 3894; 78 C 3955; 78 C 3899; 76 C 4763

Honorable Sirs:

Attached is a letter from attorney Thomas P. Brown and attorney Paul H. Heineke suggesting that the above-captioned cases are related.

If each of you agree that the cases are related and ought to be consolidated, Judges Marshall and Grady may transfer 78 C 3894, 78 C 3955 (Judge Marshall) and 78 C 3899 (Judge Grady) to the Executive Committee with the recommendation that they be reassigned to the calendar of Judge Leighton as related to 76 C 4763, if Judge Leighton consents to accept it.

Respectfully submitted,

/s/ Nina Cunningham
Nina Cunningham
Administrative Assistant to the
Court Administrator

HSC/nsc
attachments

HEINEKE & SCHRADER

135 South LaSalle Street

Cable Address Heicon | Chicago 60603 | Telephone 236-6655 Area Code 312

October 16, 1978

Honorable H. Stuart Cunningham
Clerk of the United States District Court
Northern District of Illinois
Eastern Division
219 South Dearborn Street, 20th Floor
Chicago, Illinois 60603

Re: Anabel J. McCutcheon vs.
The Board of Education, et al.
United States District Court
Case No. 78-C-3899
Our file No. 103,245

Dear Mr. Cunningham:

I am one of the attorneys in an action pending in the United States District Court, for the Northern District of Illinois, Eastern Division, captioned Anabel J. McCutcheon v. Board of Education City of Chicago, and about 27 other individual defendants. The case is No. 76-C-4763 and is presently assigned to Judge Leighton.

Jurisdiction of Count I is invoked pursuant to Title 7 of the Civil Rights Act of 1964 (42 USC 2000e, et seq.) Count II is against the Principals Association. There is pending and undecided as yet a motion to dismiss.

Jurisdiction is invoked under Count III pursuant to the Fair Labor Standards Act of 1938 and 28 USC 1337.

Jurisdiction in Count IV is invoked pursuant to 28 USC 1343 since plaintiff seeks to redress the deprivations of rights under the law secured by the 14th Amendment to the United States Constitution and 28 USC 1983.

On October 3rd, 1978, plaintiff, pro se, filed an action in the United States District Court, for the Northern District of Illinois, Eastern Division, against the Board of Education of the City of Chicago, Michael J. Murray, Mrs. Carey B. Preston, Earl B. Hoffenberg, Joseph P. Hannon, William Rohan, Gerard J. Heing and Mario Garofalo. The case received No. 78-C-3899 and was assigned to Judge Grady.

In the complaint plaintiff alleges that the action is for declaratory relief, injunctive relief and damages, to redress the deprivation of rights, and the jurisdiction of the court being invoked pursuant to the 5th and 14th Amendments of the United States Constitution and 42 USC 1983 and 42 USC 1985.

Miss McCutcheon, after a hearing, was dismissed by the Board of Education as principal of Audubon School and has pending an administrative action in the state court.

In our opinion, action 78-C-3899 grows out of the same transaction as is the predicate for the action brought and assigned No. 76-C-4763 and now pending before Judge Leighton. The basis for both claims, in our opinion, clearly relate to violations by the Board of Education and some of its employees, at least insofar as Count IV is concerned, as redress is claimed for deprivations under the color of law of rights, privileges and immunities under the 14th Amendment of the United States Constitution and 42 USC 1983.

In addition to 78-C-3899 there is pending before the United States District Court two additional lawsuits which grow out of the same transaction, 78-C-3894 and 78-C-3955. Counsel representing the defendants in those cases also intend to seek consolidation before Judge Leighton.

It seems that a decision in 76-C-4763 could or might have a chilling effect on 78-C-3899. To avoid the dupli-

cation, both by judges of the United States District Court, for the Northern District of Illinois, Eastern Division, and counsel representing the defendants, consolidation of 78-C-3899 into and with 76-C-4763 is recommended.

Respectfully submitted,
/s/ Paul H. Heineke

PPH: GP
cc: Miss Anabel J. McCutcheon
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Glenview, Ill. 60025

2653 Stewart Avenue
Evanston, Ill. 60201

## APPENDIX F

Re: Status of 78 C 3899

78-2539

Anabel J. McCutcheon, Plaintiff-Appellant-vs-The Board Of Education City Of Chicago, et al Defendants-Appellees.

Plaintiff attempted to file a notice of appeal on a referral of Judge Leighton to the Executive Committee for consolidation of this cause with another cause. The Clerk's Office requested that the plaintiff wait until the Executive Committee rendered their decision before filing a Notice of Appeal on the said matter.

Instead the plaintiff asked Judge Leighton to file the Notice of Appeal. He instructed the Clerk's office to docket the plaintiff's Notice of Appeal "as is".

/s/ E. Harold Dinger
E. Harold Dinger
Deputy Clerk